



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

May 15, 1991

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR91-236

Dear Mr. Driscoll:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12218.

You have submitted to us various documents from the personnel files of two deputy constables. You have marked the portions of these documents that you believe may be withheld from public disclosure pursuant to various sections of the Open Records Act.

We turn first to the portions that you have marked as excepted from disclosure by section 3(a)(17) of the Open Records Act. Those marked portions contain the home addresses and telephone numbers of the deputy constables. Section 3(a)(17) protects from disclosure the home addresses and telephone numbers of peace officers as defined by article 2.12 of the Texas Code of Criminal Procedure. Since the definition of "peace officers" in article 2.12 includes deputy constables, you may withhold the marked portions pursuant to section 3(a)(17). See generally Open Records Decision No. 532 (1989) (copy enclosed).

We next turn to the criminal history report that you seek to withhold from disclosure. You may withhold that report pursuant to *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 187-88 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); see also *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316 (Tex. Civ. App. - Houston [1st Dist.] 1984, no writ).

We now address the portions that you have marked as excepted from disclosure under sections 3(a)(1) and 3(a)(2). Section 3(a)(1) protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Thus, records or the contents of records made confidential by state statute fall within the section 3(a)(1) exception. Since section 51.14(d) of the Family Code prohibits disclosure of the law enforcement files and records that relate to charges against juvenile actors, as well as the contents of those files and records, you must withhold the portions of the February 5, 1988, letter to the chief of the South Houston Police Department that you have marked as confidential. See Open Records Decision No. 181 (1977) (copy enclosed). You must also withhold pursuant to statute the marked portion of the document dated September 23, 1978, that contains a medical report prepared by a physician. See V.T.C.S. art. 4495b, § 5.08.

We are unaware of any other statute that makes confidential the remaining portions that you have marked as excepted under section 3(a)(1). Thus, we now focus on the portions that may be excepted under common-law privacy. As stated in Open Records Decision No. 545 (1990), this office employs a two-prong test with regard to common-law privacy taken from *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977). Pursuant to that test, information is protected by common-law privacy if (1) it contains highly intimate or embarrassing facts about a person's private affairs, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. The courts have held that this two-prong test also applies to section 3(a)(2). *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Accordingly, sections 3(a)(1) and 3(a)(2) may be considered together.

In Open Records Decision No. 545 (1990) we held that common-law privacy protected from disclosure public employees' personal investment decisions with regard to a deferred compensation plan. That opinion also noted that previous decisions had held that a broad range of personal financial information could be withheld from disclosure. Open Records Decision No. 545, *supra*, at 3-4 (copy enclosed). Thus, the information that you have marked that relates to the employees' payroll deductions, withholding allowances, beneficiary designations, and selection of and dependent coverage under health insurance plans may be withheld pursuant to section 3(a)(1). See also Open Records Decision No. 226 (1979).

You also seek to withhold under section 3(a)(1) the names of personal physicians and certain employee and dependent medical history information appearing on insurance application forms or on documents indicating claims filed. In addition to common-law privacy, section 3(a)(1) incorporates constitutional protections regarding individual privacy. *Industrial Foundation, supra*, at 679-81. One aspect of constitutional privacy concerns the right of an individual to be free from the government disclosing certain private facts about his affairs. Open Records Decision No. 455 (1987) (copy enclosed). That aspect, referred to as disclosural privacy, has been held to protect an individual's medical history or records unless the interest of the public in disclosure of the information outweighs the individual's interest in privacy. See Open Records Decision No. 455, *supra*, at 8-9; see also *Whalen v. Roe*, 429 U.S. 589, 598-600 (1977); *Tarrant County Hosp. Dist. v. Hughes*, 734 S.W.2d 675, 679-80 (Tex. App.--Fort Worth 1987), *cert denied*, 108 S. Ct. 1027 (1988). Since there is no apparent public interest in the medical history at issue here, you may withhold such information from disclosure.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-236.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/lcd

Ref.: ID# 12218

Enclosure: Open Records Decision No. 545, 532, 455, 181

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